

Article 8A.

Sale of Agricultural Liming Materials and Landplaster.

§ 106-92.1. Title of Article.

This Article shall be known as the North Carolina Agricultural Liming Materials and Landplaster Act. (1979, c. 590.)

§ 106-92.2. Purpose of Article.

The purpose of this Article shall be to assure the manufacturer, distributor, and consumer of the correct quality and quantity of all agricultural liming materials and landplaster sold in this State. (1979, c. 590.)

§ 106-92.3. Definitions of terms.

For the purpose of this Article:

- (1) "Agricultural liming materials" means oxides, hydroxides, silicates or carbonates of calcium and/or magnesium compounds capable of neutralizing soil acidity.
- (1a) "Agricultural liming material and fertilizer mixture" means any agricultural liming material combined with a single fertilizer element or single plant nutrient.
- (2) "Brand" means the term, designation, trademark, product name or other specific designation truly descriptive of the product under which individual agricultural liming material is offered for sale.
- (3) "Bulk" means in nonpackaged form.
- (4) "Burnt lime" means a material, made from limestone which consists essentially of calcium oxide or combination of calcium oxide with magnesium oxide.
- (5) "Calcitic limestone" means limestone which contains less than six percent (6%) magnesium from magnesium carbonate.
- (6) "Calcium carbonate equivalent" means the acid neutralizing capacity of an agricultural liming material expressed as weight percentage of calcium carbonate.
- (7) "Dolomitic limestone" means limestone having a minimum of six percent (6%) magnesium from magnesium carbonate.
- (8) "Fineness" means the percentage by weight of the material which will pass U.S. Standard sieves of specified sizes.
- (9) "Hydrated lime" means a material, made from burnt lime, which consists essentially of calcium hydroxide or a combination of calcium hydroxide with magnesium oxide and/or magnesium hydroxide.
- (10) "Industrial by-product liming material" means any industrial waste or by-product containing calcium or calcium and magnesium in forms that will neutralize soil acidity.
- (11) "Label" means any written or printed matter on or attached to the package or on the delivery ticket which accompanies bulk shipments.
- (12) "Landplaster" means a material containing calcium sulfate.

- (13) "Limestone" means a material consisting essentially of calcium carbonate or a combination of calcium carbonate with magnesium carbonate capable of neutralizing soil acidity.
- (14) "Marl" means a granular or loosely consolidated earth-like material composed largely of sea shell fragments and calcium carbonate.
- (15) "Percent" or "percentage" which means by weight.
- (16) "Person" means individual, partnership, association, firm or corporation.
- (17) "Sale" means any transfer of title or possession, or both, exchange or barter of tangible personal property, conditional or otherwise for a consideration paid or to be paid, and this shall include any of said transactions whereby title or ownership is to pass and shall further mean and include any bailment, loan, lease, rental or license to use or consume tangible personal property for a consideration paid in which possession of said property passes to bailee, borrower, lessee, or licensee.
- (18) "Sell" means the alienation, exchange, transfer or contract for such transfer of property for a fixed price in money or its equivalent.
- (19) "Suspension lime" means a product made by mixing agricultural liming materials with water and a suspending agent.
- (20) "Ton" means a net weight of 2,000 pounds avoirdupois.
- (21) "Weight" means the weight of undried material as offered for sale. (1979, c. 590; 1981, c. 449, s. 2.)

§ 106-92.4. Enforcing official.

This Article shall be administered by the Commissioner of Agriculture of the State of North Carolina, or his authorized agent, hereinafter referred to as the "Commissioner." (1979, c. 590.)

§ 106-92.5. Labeling.

(a) Agricultural liming materials sold, offered for sale or distributed in the State shall have affixed to each package in a conspicuous manner on the outside thereof, a plainly printed, stamped or otherwise marked label, tag or statement, or in the case of bulk sales, a delivery slip, setting forth at least the following information:

- (1) The name and principal office address of the manufacturer or distributor.
- (2) The brand or trade name truly descriptive of the material.
- (3) The identification of the product as to the type of the agricultural liming material.
- (4) The net weight of the agricultural liming material.
- (5) The minimum percentages of calcium and magnesium.
- (6) Calcium carbonate equivalent as determined by methods prescribed by the Association of Official Analytical Chemists. Minimum calcium carbonate equivalent shall be prescribed by regulation.
- (7) The minimum percent by weight passing through U. S. Standard sieves as prescribed by regulations.

(b) Landplaster sold, offered for sale or distributed in this State shall have affixed to each package in a conspicuous manner on the outside thereof, a plainly printed, stamped or otherwise

marked label, tag or statement, or in the case of bulk sales, a delivery slip, setting forth at least the following information:

- (1) The name and address of the manufacturer or distributor guaranteeing the registration.
- (2) The brand or trade name of the material.
- (3) The net weight.
- (4) The guaranteed analysis showing the minimum percentage of calcium sulfate. (1979, c. 590.)

§ 106-92.6. Prohibited acts.

- (a) Agricultural liming material or landplaster shall not be sold or offered for sale or distributed in this State unless it complies with provisions of this law or regulations.
- (b) Agricultural liming material or landplaster shall not be sold or offered for sale in this State which contains toxic materials in quantities injurious to plants or animals.
- (c) It is unlawful to make any false or misleading statement or representation with regard to any agricultural liming material or landplaster product offered for sale, sold, or distributed in this State, or to use any misleading or deceptive trademark or brand name in connection therewith. The Commissioner may refuse, suspend, revoke, or terminate the registration of any such product for any violation of this section. (1979, c. 590; 1993, c. 144, s. 2.)

§ 106-92.7. Registration of brands.

- (a) Each separately identified product shall be registered before being sold, offered for sale, or distributed in this State. Registration fee shall be twenty-five dollars (\$25.00) for each separately identified product in packages of 10 pounds or less. For each other separately identified product registration fee shall be five dollars (\$5.00). The application for registration shall be submitted to the Commissioner on forms furnished by the Commissioner and shall be accompanied by the appropriate registration fee. Upon approval by the Commissioner, a copy of the registration shall be furnished to the applicant. All registrations expire on June 30 of each year.
- (b) A distributor shall not be required to register any brand of agricultural liming material or landplaster which is already registered under this Article by another person, providing the label does not differ in any respect.
- (c) In determining the acceptability of any product for registration, the Commissioner may require proof of claims made for the product. If no specific claims are made, the Commissioner may require proof of usefulness and value of the product. As evidence of proof, the Commissioner may rely on experimental data furnished by the applicant and may require that the data be developed by a recognized research or experimental institution. The Commissioner may further require that the data be developed from tests conducted under conditions identical to or closely related to those present in North Carolina. The Commissioner may reject any data not developed under those conditions and may rely on advice from sources such as the Cooperative Extension Service of North Carolina State University. (1979, c. 590; 1993, s. 144, s. 1.)

§ 106-92.8. Tonnage fees: reporting system.

For the purpose of defraying expenses connected with the registration, inspection and analysis of the materials coming under this Article, each manufacturer or registrant shall

pay to the Department of Agriculture and Consumer Services tonnage fees in addition to registration fees as follows: for agricultural liming material, fifty cents (50¢) per ton; for landplaster, fifty cents (50¢) per ton; excepting that these fees shall not apply to materials which are sold to fertilizer manufacturers for the sole purpose for use in the manufacture of fertilizer or to materials when sold in packages of 10 pounds or less.

Any manufacturer, importer, jobber, firm, corporation or person who distributes materials coming under this Article in this State shall make application for a permit to report the materials sold and pay the tonnage fees as set forth in this section.

The Commissioner of Agriculture shall grant such permits on the following conditions: The applicant's agreement that he will keep such records as may be necessary to indicate accurately the tonnage of liming materials, etc., sold in the State and his agreement for the Commissioner or this authorized representative to examine such records to verify the tonnage statement. The registrant shall report quarterly and pay the applicable tonnage fees quarterly, on or before the tenth day of October, January, April, and July of each year. The report and payment shall cover the tonnage of liming materials, etc., sold during the preceding quarter. The report shall be on forms furnished by the Commissioner. If the report is not filed and the tonnage fees paid by the last day of the month in which it is due, or if the report be false, the amount due shall bear a penalty of ten percent (10%) which shall be added to the tonnage fees due. If the report is not filed and the tonnage fees paid within 60 days of the date due, or if the report or tonnage be false, the Commissioner may revoke the permit and cancel the registration. (1979, c. 590; 1997-261, s. 109; 2011-145, s. 31.9.)

§ 106-92.9. Report of tonnage.

(a) Within 30 days following the expiration of registration each registrant shall submit on a form furnished or approved by the Commissioner an annual statement, setting forth by counties, the number of net tons of each agricultural liming material and landplaster sold by him for use in the State during the previous 12 month period.

(b) The Commissioner shall publish and distribute annually, to each agricultural liming material and landplaster registrant and other interested persons a composite report showing the tons of agricultural liming material and landplaster sold in each county of the State. This report shall in no way divulge the operation of any registrant. (1979, c. 590.)

§ 106-92.10. Inspection, sampling, analysis.

(a) It shall be the duty of the Commissioner to sample, inspect, make analysis of, and test agricultural liming materials and landplaster distributed within this State as he may deem necessary to determine if such materials are in compliance with the provisions of this Article. The Commissioner is authorized to enter upon any public or private premises or carriers during regular business hours in order to have access to agricultural liming material and landplaster subject to the provisions of this Article, and regulations pertaining thereto, and to the records relating to their distribution.

(b) The methods of analysis and sampling shall be those approved by the State Chemist, and shall be guided by the Association of Official Analytical Chemists procedures.

(c) The results of official analysis of agricultural liming materials and portions of official samples may be distributed to the registrant by the Commissioner at least annually if requested. (1979, c. 590.)

§ 106-92.11. Deficiencies: refunds to consumer.

Should any of the agricultural liming and landplaster materials defined in this Article be found to be deficient in the components claimed by the manufacturer or registrant thereof, said manufacturer or registrant, upon official notification to [of] such deficiency by the Commissioner of Agriculture, shall, within 90 days, make refunds to the consumers of the deficient materials as follows:

In case of "agricultural liming material" if the deficiency is five percent (5%) of the guarantee or more, there shall be refunded an amount equal to three times the value of such deficiency and in case of "landplaster," for deficiencies in excess of one percent (1%) of the guarantee, there shall be refunded an amount equal to three times the value of the deficiency. Values shall be based on the selling price of said materials. When said consumers cannot be found within the above specified time, refunds shall be forwarded to the Commissioner of Agriculture, where said refund shall be held for payment to the proper consumer upon order of the Commissioner. If the consumer to whom the refund is due cannot be found within a period of one year, the clear proceeds of such refund shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1979, c. 590; 1997-261, s. 109; 1998-215, s. 6.)

§ 106-92.12. "Stop sale" orders.

The Commissioner may issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of agricultural liming material or landplaster at a designated place when the Commissioner finds said material is being offered or exposed for sale in violation of any of the provisions of this Article until the law has been complied with and said violation has been otherwise legally disposed of by written authority. The Commissioner shall release the agricultural liming materials or landplaster so withdrawn, when the requirements of the provisions of this Article have been complied with and all costs and expense incurred in connection with the withdrawal have been paid.

If a manufacturer or registrant fails to make a refund as required by G.S. 106-92.11, the Commissioner may stop the sale of any agricultural liming materials or landplaster registered by the manufacturer or registrant and offered for sale in this State. (1979, c. 590; 1993, c. 144, s. 3.)

§ 106-92.13. Appeals from assessments and orders of Commissioner.

Nothing in this Article shall prevent any person from appealing to a court of competent jurisdiction from any assessment of penalty or other final order or ruling of the Commissioner or Board of Agriculture. (1979, c. 590.)

§ 106-92.14. Penalties for violations of this Article.

Any person convicted of violating any provision of this Article or the rules and regulations promulgated thereunder shall be guilty of a Class 3 misdemeanor and fined not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000) in the discretion of the court. Nothing in this Article shall be construed as requiring the Commissioner or his authorized

agent to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the Article when he believes that the public interest will best be served by a suitable written warning. (1979, c. 590; 1993, c. 539, s. 743; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-92.15. Declaration of policy.

The General Assembly hereby finds and declares that it is in the public interest that the State regulate the activities of those persons engaged in the business of preparing, or manufacturing agricultural liming material and landplaster in order to insure the manufacturer, distributor, and consumer of the correct quantity and quality of all said materials sold or offered for sale in this State. It shall therefore be the policy of this State to regulate the activities of those persons engaged in the business of preparing or manufacturing agricultural liming material and landplaster. (1979, c. 590.)

§ 106-92.16. Authority of Board of Agriculture to make rules and regulations.

Because legislation with regard to agricultural liming material and landplaster sold or offered for sale in this State must be adopted (adapted) to complex conditions and standards involving numerous details with which the General Assembly cannot deal directly and in order to effectuate the purposes and policies of the Article, and in order to insure the manufacturer, distributor, and consumer of the correct quality and quantity of all agricultural liming material and landplaster sold or offered for sale in this State, the Board of Agriculture shall have the authority to make rules and regulations with respect to:

- (1) Defining a standard agricultural liming material in terms of neutralizing equivalents.
- (2) Fineness of agricultural liming material.
- (3) Form and order of labeling.
- (4) Monetary penalties for deficiencies from guarantee.
- (5) Monetary penalties for materials that do not meet screen guarantee. (1979, c. 590.)

§ 106-92.17. Lime and fertilizer mixtures.

The provisions of this Article shall apply to mixtures of agricultural liming material and fertilizer, except as follows:

- (1) Such mixtures shall meet the labeling requirements of G.S. 106-92.5(a) in addition to providing information including, but not limited to, a guaranteed analysis of the fertilizer element or plant nutrient;
- (2) The tonnage fee for such mixtures under G.S. 106-92.8 shall be twenty-five cents (25¢) per ton; and,
- (3) The Board of Agriculture shall establish the allowable deficiency percentage and refund rate for such mixtures under G.S. 106-92.11. (1981, c. 449, s. 1.)